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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,447	05/09/2001	Gary E. Ross	3125.00003	5137

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EXAMINER

HILLERY, NATHAN

ART UNIT	PAPER NUMBER
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2176

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/852,447

Applicant(s)

ROSS, GARY E.

Examiner

Nathan Hillery

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-16, 18-26 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-16, 18-26 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. This action is responsive to communications: RCE filed on 2/21/06.
2. Claims 1, 2, 3, 5 – 16, 18 – 26 and 51 are pending in the case. Claims 1, 15 and 51 are independent.
3. The rejection of claims 1, 2, 3, 5 – 16, 18 – 26 and 51 under 35 U.S.C. 101 as being nonstatutory has been maintained.
4. The rejection of claims 1, 2, 3, 5 – 16, 18 – 26 and 51 under 35 U.S.C. 112, second paragraph as being indefinite has been maintained.
5. The rejection of claims 1, 2, 3, 5 – 16, 18 – 26 and 51 under 35 U.S.C. 102(e) as being anticipatory has been maintained.

Continued Examination Under 37 CFR 1.114

6. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/16/05 has been entered.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1, 2, 3, 5 – 16, 18 – 26 and 51 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

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9. Claims 1, 2, 3, 5 – 16, 18 – 26 and 51 have no practical application of judicial exception as claimed because there is no physical transformation and no concrete, useful and tangible result. The result of the claimed operative step, **prompting a user to enter detailed information at the time of patient care delivery**, remains in the abstract and is not made available to the user; thus it is not tangible. The claims appear to be in the preliminary stages and fall short of the disclosed practical utility. In other words, the claims fail to fulfill and/or reflect the specific, substantial, and credible utility sought by the disclosed invention, and thus do not produce a useful result. Also, the input received by the system and/or program appears to be subjectively analyzed with no reliable, assured result being output and thus does not produce a concrete result. Consequently, the claims are nonstatutory. The claims simply recite the input of data.
10. Further, to expedite a complete examination of the instant application the claims rejected under 35 U.S.C. 101 (nonstatutory) above are further rejected as set forth below in anticipation of applicant amending these claims to place them within the four statutory categories of invention.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. Claims 1, 2, 3, 5 – 16, 18 – 26 and 51 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for does not reasonably provide enablement for **said selection mechanism prompting a user to enter**

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detailed information at the time of patient care delivery (claims 1, 15, and 51). The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. The augmenting system as disclosed simply influences the physician's decisions at the time of patient care delivery and does **not** prompt a user to enter detailed information at the time of patient care delivery as claimed.

13. Claims 1, 2, 3, 5 – 16, 18 – 26 and 51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. While the specification explains that *the augmenting mechanism improves the accuracy of the medical coding and the overall quality of patient care by influencing the physician's decisions at the time of patient care delivery* (p 25, lines 11 – 13), it does not convey **prompting a user to enter detailed information at the time of patient care delivery** as claimed.

14. Regarding claims 2 – 14, and 16 – 26, the claims are rejected for fully incorporating the deficiencies of the base claim(s) from which they depend.

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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16. Claims 1, 2, 3, 5 – 16, 18 – 26 and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

17. Regarding claims 1, 15 and 51, it is unclear what applicant means by “to better comply with governmental regulatory coding regiments”. The term “to better comply” lacks comparative basis because the degree of compliance is unclear, i.e. better than what? The metes and bounds of “to better comply with governmental regulatory coding regiments” are unclear. The exact “governmental regulatory coding regiments” are unknown, and the specification does not define them. The recitation, “to better comply with governmental regulatory coding regiments”, will not be considered due to its indefiniteness and because it amounts to intended use and would not change the scope of the claims even if it was clear.

18. The term "classify appropriately" in claims 1, 15 and 51 is a relative term which renders the claim indefinite. The term "classify appropriately" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Consequently, “classify an inpatient stay appropriately” has been rendered indefinite.

19. The term "intelligently suggesting information" in claims 6 and 19 is a relative term which renders the claim indefinite. The term "intelligently suggesting information" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be

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reasonably apprised of the scope of the invention. Consequently, "intelligently suggesting information" has been rendered indefinite.

20. Regarding claims 2 – 14, and 16 – 26, the claims are rejected for fully incorporating the deficiencies of the base claim(s) from which they depend.

Claim Rejections - 35 USC § 102

21. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

22. Claims 1, 2, 3, 5 – 16, 18 – 26 and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Dart et al. (US 6529876 B1).

23. **Regarding independent claim 1**, Dart et al. teach that *This method and apparatus is directed to an electronic or computer base wherein a computer directed by a computer program performs a complete audit of E&M coding prior to billing thus ensuring compliance with statutory and regulatory requirements. The present invention prompts the provider to acquire and document data specifically required for the medical evaluation and, ultimately, the billing for professional services for each different type of patient encounter (Column 2, lines 46 – 59) and that Reception Interface 1820 represents immediate interactions with a patient with that interaction resulting in data acquisition which is maintained in the reception data base, ...; similarly patient or patient*

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*encounter interactions at Nurse Station Software Interface 1810, Check-In Interface 1830, Check-Out Interface 1840 and Provider Interface 1850 represent interactions with a patient with that interaction resulting in data acquisition maintained in the respective data bases ... (Column 10, lines 12 – 32), compare with **selection option mechanism for eliciting information for medical codes through the analysis of clinician-entered information and predetermined criteria input, said selection option mechanism prompting a user to enter detailed information at the time of patient care delivery to better comply with governmental regulatory coding regiments in order to classify an inpatient stay appropriately to obtain an accurate payment.***

24. **Regarding dependent claim 2,** Dart et al. teach that *Reception Interface 1820 represents immediate interactions with a patient with that interaction resulting in data acquisition which is maintained in the reception data base, ...; similarly patient or patient encounter interactions at Nurse Station Software Interface 1810, Check-In Interface 1830, Check-Out Interface 1840 and Provider Interface 1850 represent interactions with a patient with that interaction resulting in data acquisition maintained in the respective data bases ... (Column 10, lines 12 – 32), compare with **storage means for recording inputted predetermined criteria, entered information and conclusions thereof into a database.***

25. **Regarding dependent claim 3,** Dart et al. teach that *This method and apparatus is directed to an electronic or computer base wherein a computer directed by a computer program performs a complete audit of E&M coding prior to billing thus*

ensuring compliance with statutory and regulatory requirements (Column 2, lines 46 – 59), compare with **said selection option mechanism is a software program.**

26. **Regarding dependent claim 5**, Dart et al. teach that *inputting into the computer modifying variables for the specific patient encounter* (Column 11, lines 15 – 34), compare with **said selection option mechanism includes at least one of data addition means for adding information and data substituting means for substituting information and**

27. **Regarding dependent claim 6**, Dart et al. teach that *Provider Tables 1898(tracking the History, Physical, Medical Decision Making, and Apply Modifying Variables 1100, 1200, 1300, 1660 leading to the Final E&M Code 1701) and other tables* (Column 10, lines 12 – 32), compare with **said selection option mechanism includes an elicitation database for intelligently suggesting information for medical codes, alternative conclusions, and predetermined criteria to support the conclusions.**

28. **Regarding dependent claim 7**, Dart et al. teach that *the preferred embodiment of the invention provides a method and apparatus to maximize efficiency and accuracy for the provider in determining and documenting correct Evaluation and Management CPT code (E&M code or E&M coding) as required for agency reimbursement for health care delivered* (Column 2, lines 5– 10), compare with **said selection option mechanism includes eliciting conclusions selected from the group consisting of medical payment codes, billing codes, treatment codes, and service codes.**

29. **Regarding dependent claim 8**, Dart et al. teach that *Reception Interface 1820 represents immediate interactions with a patient with that interaction resulting in data acquisition which is maintained in the reception data base, Reception Tables 1892(which tracks patient appointments, inquiries, and communications from the provider's workplace with the patient); similarly patient or patient encounter interactions at Nurse Station Software Interface 1810, Check-In Interface 1830, Check-Out Interface 1840 and Provider Interface 1850 represent interactions with a patient with that interaction resulting in data acquisition maintained in the respective data bases Nurse Station Tables 1890(tracking information taken by a nurse from or regarding a patient or patient encounter), Check-In Tables 1894(tracking the history and patients current status at the time of check-in and the time and date of check-in), Check-Out Tables 1896(tracking the delivery of instructions for laboratory or other care to be sought by the patient and the time and date of check-out), Provider Tables 1898(tracking the History, Physical, Medical Decision Making, and Apply Modifying Variables 1100, 1200, 1300, 1660 leading to the Final E&M Code 1701) and other tables (Column 10, lines 12 – 32), compare with **said selection option mechanism includes analysis of predetermined criteria input wherein the criteria includes phrases, words, numbers and symbols relating to the conclusions.***

30. **Regarding dependent claim 9**, Dart et al. teach that *The preferred embodiment electronic template medical record coding system disclosed herein is illustrated in FIGS. 1 through 11 and can be provided in software for single-user operation on stand-alone personal computers, for example, by a sole practitioner or for multi-user operations on a*

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*network, used for example, by physicians and others within a single facility, clinic, group practice, hospital or other medical providers or organizations. In the preferred embodiment the present invention includes a Central Processing Unit Database server(CPU Database Server) 1870, one or more interfaces (Column 9, lines 5 – 15), compare with **utilized on a device selected from the group consisting of hand-held devices, portable computers, desktop computers, wireless devices, web-based technology systems, touch screen devices, typing devices, and electronic devices.***

31. **Regarding dependent claim 10**, Dart et al. teach that *Realtime audits are audits occurring upon the inputting of acquired data, into the computer, following the conclusion of data inputting pertinent to each component of the patient encounter. The provider is prompted to contrast the data actually acquired with that required for the specific type of patient encounter and as required by regulation for billing purposes. The provider thus confirms that requisite data inputting has occurred (Column 9, lines 43 – 50), compare with **accuracy confirming means for confirming the accuracy of previously entered information.***

32. **Regarding dependent claim 11**, Dart et al. teach that *Reception Interface 1820 represents immediate interactions with a patient with that interaction resulting in data acquisition which is maintained in the reception data base, ...; similarly patient or patient encounter interactions at Nurse Station Software Interface 1810, Check-In Interface 1830, Check-Out Interface 1840 and Provider Interface 1850 represent interactions with a patient with that interaction resulting in data acquisition maintained in the respective*

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*data bases ... (Column 10, lines 12 – 32), compare with **searching means for locating words and phrases**. It should be noted that databases inherently include searching mechanisms in further support Microsoft defines database as *A file composed of records, each containing fields together with a set of operations for searching, sorting, recombining, and other functions* (<[http://support.microsoft.com/default.aspx?scid = %2Fsupport%2Fglossary%2Fd.asp](http://support.microsoft.com/default.aspx?scid=%2Fsupport%2Fglossary%2Fd.asp)>).*

33. **Regarding dependent claim 12**, Dart et al. teach that *Secure server-based electronic mail software linking people and information over enterprise networks, the internet and other networks, may be employed* (Column 10, lines 47 – 50), compare with **linking means for linking to a listing and description of predetermined criteria**.

34. **Regarding dependent claim 13**, Dart et al. teach that *A template or form, specific to the particular type of patient encounter, is displayed on a computer screen which contains text fields, drop-down lists, check boxes and graphics* (Column 3, lines 3 – 6), compare with **free-text entry means for entering text into said system**.

35. **Regarding dependent claim 14**, Dart et al. teach that *Cryptographic processing may be employed where output communications, of final E&M coding or other information, is transmitted, for example via internet or other electronic means, from the provider computer system to entities responsible for reimbursement, auditing or other functions* (Column 9, lines 59 – 63), compare with **security means for restricting access to said system**.

36. **Regarding independent claim 15**, the claim incorporates substantially similar subject matter as claim 1, and is rejected along the same rationale.

37. **Regarding dependent claim 16**, Dart et al. teach that *Cryptographic processing may be employed where output communications, of final E&M coding or other information, is transmitted, for example via internet or other electronic means, from the provider computer system to entities responsible for reimbursement, auditing or other functions* (Column 9, lines 59 – 63), compare with **accessible through communication systems selected from the group consisting of the Internet, Intranet, Extranet, and electronically**.

38. **Regarding dependent claims 18 – 26**, the claims incorporate substantially similar subject matter as claims 5 – 8, 10, 14 and 11 – 13, respectively, and are rejected along the same rationale.

39. **Regarding independent claim 51**, the claim incorporates substantially similar subject matter as claim 1, and is rejected along the same rationale.

Response to Arguments

40. Applicant's arguments with respect to claims 1, 2, 3, 5 – 16, 18 – 26 and 51 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Hillery whose telephone number is (571) 272-4091. The examiner can normally be reached on M - F, 10:30 a.m. - 7:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather R. Herndon can be reached on (571) 272-4136. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Doug Hutton
Primary Examiner
Art Unit 2176

NH